SPECULATION ON THE STOCK EXCHANGES—DISCUSSION

Albert W. Atwood: I wish to confine my remarks to two points, the first made by Mr. Untermyer, and the second by Professor Emery.

It is the contention of Mr. Untermyer that a large part of the transactions on the Stock Exchange are what he terms "manipulation." Now we all have more or less of an idea what this word means, but I have never seen it carefully defined, and it is hard to find two people who agree as to what it means. However, the first speaker illustrated what he meant mainly by one instance, namely, the activity in Reading stock in one year. It appears that the entire capital stock of the Reading Company was turned over more than forty times in one year.

Now there may be manipulation on the Stock Exchange, but it is only fair to observe that the great fundamental changes in prices on the Exchange appear to bear little if any relation to manipulation, or to any artificial influence. These changes, in recent years at least, and going back for a number of years, have been due to the *changes in the value of the properties* the stocks represented. It is maintained by numerous economists that speculation arises from changes in the value of property, and certainly there is ample evidence that the great price movements, which after all are perhaps the best test of what is going on, have been due to the rise or fall in the value of certain corporations.

The long decline in New Haven stock was clearly not due to stock market manipulation. It may have been due to manipulation of the property by so-called "insiders," or it may not; that is not the question for us to settle. But certainly it is admitted that confidence in the property was for a time at a low ebb, and that is the reason the price of the stock declined. Exactly the same is true, even in a greater degree, of Rock Island, Missouri Pacific, and St. Louis & San Francisco, and to a less degree of Baltimore & Ohio, where the gradually realized fact that a bad investment had been made in the Cincinnati, Hamilton & Dayton property, together with the enormous distribution of Baltimore & Ohio stock by the Union Pacific, has forced the price down. On the other hand the tremendous speculation in such stocks as Lehigh Valley, Union Pacific, and Reading were largely due to knowledge, later transmuted into extra dividends, of the riches

of these companies. Mr. Untermyer has made much of Reading, but why should not the stock have been active when everyone with any familiarity with such matters knew perfectly well that some day the company would probably distribute a great extra dividend in the form of its coal lands (it owns 40 per cent of the country's anthracite coal) either voluntarily or because forced by the government? Indeed I imagine that the very year in which Reading's stock was dealt in forty times over was just before the regular cash dividend was largely increased. Why should there not be active speculation in a stock of this character? Certainly if speculation was ever warranted, it was in this case; and the same remark applies to Lehigh Valley and Union Pacific, in both of which the big burst of speculation took place shortly before big extra dividends were paid.

It is largely in these stocks that the great, fundamental price changes have occurred, and I submit that heavy speculation was warranted by facts. During the last year or two I have answered for various periodicals perhaps a thousand letters from investors. And I can assert that speculation on the Stock Exchange seems small to me as compared with that in other fields. There is constantly an enormous volume of speculation, which is what Mr. Untermyer appears largely to mean by "manipulation," in Standard Oil stocks, motion picture stocks, real estate, stocks of companies based on new inventions, and stocks of new insurance companies, all of which are not on the Exchange.

My second point has to do with Professor Emery's contention that the authorities of the Stock Exchange, or the government officials, should not direct the flow of investment. I agree with Professor Emery that it is not the function of the Exchange to direct the flow of investment, but it might well be a sound business policy for the Stock Exchange to attempt to make of itself more of an investment market.

It will be found upon examination that the Stock Exchange's service to the country has been largely to help in the development of great industries. I do not mean by this trusts, and can name ten trusts which have not had their securities listed on the Exchange. But it can easily be shown that chiefly large-scale enterprises have flourished on the Stock Exchange. Now cannot the Exchange be made a more complete mirror of values? Much of the investment bond business has drifted away from the Exchange, and relatively few of the newer public utility bonds, into which investment funds now largely flow, are listed.

Promoters of these new public utility holding companies say they do not care to have their securities listed to become speculative footballs. This is disingenuous. The Stock Exchange says that most of the newer and smaller enterprises are not good enough, not seasoned enough, to be listed. But can not a happy medium be found? The London Exchange has 9000 securities listed and the New York Exchange has only 1500.

It is wholly incorrect to say that Stock Exchange members do not want investment business. They well know that exclusively speculative houses are pretty sure to go to the wall sooner or later. But here is the rub; the big commissions come on speculative business. Firms cannot make expenses by selling single shares of stock at 12½ cents a share, the regular commission. Now the bulk of the investment business has gone off the Exchange, to outside bond dealers who instead of charging ⅛ of 1 per cent commission, as brokers are compelled to do, charge anywhere from 2 to 5 per cent. Indeed a dealer cannot assume moral responsibility for bonds and investigate them without charging far more than ⅛ of 1 per cent.

Now the Stock Exchange naturally does not want to increase commissions and reduce business, and to charge more for investment securities than for speculative ones would be utterly lacking in feasibility. Besides the Stock Exchange regards its members as agents merely; it does not seem practical to have them assume a considerable measure of moral responsibility for the securities sold to clients, as is the case outside with so-called investment bankers. Certainly Stock Exchange brokers cannot give extensive advice and back up securities at 12½ cents a share, and if they charge more it will destroy the big, free market.

The problem is a difficult one and I am not competent to solve it. I merely wish to suggest it. Perhaps the Stock Exchange brokers can discover better merchandising methods. They should be permitted wider latitude in advertising. They should adopt a publicity campaign to call attention to desirable listed securities.

W. E. Lagerquist: A study of the various periods of agitation for stock exchange reform will soon convince one that these demands for reform and regulation have, too often, been wide of their mark. The whole difficulty, as Professor Emery points out, is the confusion as to the real function of the Stock Exchange. It is a confusion of the functions of the Stock Exchange, which is

only a market, with speculation, and I would go farther than Professor Emery and say with the corporation also. While everyone will acknowledge that certain evils have existed in the Stock Exchange, the beneficial results that the public is seeking and may have the just right to demand cannot be accomplished by regulating the market, but by regulating the corporation whose securities make the market.

As my time is limited to ten minutes, I wish to confine myself to this one latter point. While I am aware that members of this Association are perfectly familiar with all that I have to say, I am also aware that regulation must fall of its own weight if we disregard fundamental principles.

According to the elementary concept, if the market is free, the market price depends upon the estimated value of the goods back of the security. Further, we know that the more accurate this knowledge is and the more widely it is disseminated, the narrower will be the range in the price of that security. If this elementary statement is true it can lead to only one conclusion, namely, that the dangers suggested by Mr. Untermyer in his brief for the Pujo Committee do not exist in the Stock Exchange or in speculation, but in public ignorance of the financial status of the corporation.

It has been this ignorance of property values that has often made it possible for a small element among the professional speculators to force a price upward and bring about an unreasoning speculative activity which results in reinforcing their efforts. While actual fluctuating values of property, for illustration, did have a small bearing in the recent oil and rubber booms of England, a proper perspective has shown that the public was utterly oblivious of the necessity of actual property back of their securities. Or they accepted the word of a fakir without proof, consequently a "public speculative mad" brought on an overinflated and erratic market. Eliminate these possibilities and you reduce to the lowest possible minimum the kind of speculation that both the opponents and defenders of the Stock Exchange now repudiate. If an agent's clientele had a fairly accurate knowledge of the source of the knowledge of corporate values, there would be no basis upon which the agents could manipulate securities.

Grant that the indirect or direct regulation of the Stock Exchange by the federal government was constitutionally possible under the bill last proposed in Congress, what would be the result?

Corporations would have a perfect right to withdraw their securities from the Exchange, and it is quite probable that they would, in many instances, because of the disadvantages of being listed. Of what avail then, would legislation be that would thwart its own purpose? Even if the companies now listed should all continue on the Exchange, a very large amount of corporate securities would be offered outside the Exchange. It is in connection with such outside securities that some of our grossest frauds have occurred. The regulation of the Stock Exchange would have no effect whatsoever on these securities, and it has been in the purchase of these securities that the small buyer has suffered the greatest losses. Not only will you find strong opposition within the Stock Exchange against such corporations, but the Investment Bankers Association, which has a large membership in the Exchange, is carrying on an effective movement of publicity and legal procedure against these fraudulent enterprises.

If, then, the greater part of your corporate securities would not come under the jurisdiction of the Exchange regulation, your legislation would have no end. The real object of the agitators for reform is "full value." Would not then the most effective method of obtaining the facts desired be to go to the source upon which your values rest, namely, the corporation? Require the corporation to submit all the necessary facts that are essential to determine the value of its securities; you would then be able to reach not only all corporations doing an interstate business, but you would also make it possible to reach the class of offenders that have been the worst sinners. The New York Stock Exchange has asked for this regulation for a long time; it would relieve it of some of its greatest difficulties.

To anyone who has been connected with any kind of financial institution more than to anyone else, the danger of a single institution acting as a guide to the public in respect to hundreds of corporations is most apparent. How could the Exchange become sponsor for shifting values? In some industrials the price, even under the most efficient policy, fluctuates widely, and although the prevailing price may indicate what we now think, it may not be the correct criterion for the investor at that time. While the average market price over long periods does reflect the condition of a corporation, would it be the part of wisdom to vouchsafe that this reflects the future value of securities? Would it not be a

sounder economic policy to have the facts about all corporations and let the individual or the agent of the individual purchaser interpret the meaning of the facts? For all that the Exchange could do would be to give the facts; it could not assume the position of an interpreter or guarantor.

The danger of this policy is illustrated by the incredible number of people who now accept the certified public accountant's certificate, which is a mere assertion that he has found the exhibited statement a true exhibit of the financial accounts of the corporation, as a guarantee upon which they may rely as an indicator of good values in securities. No one need argue to how much greater extent these companies would be accepted as guaranteed under the regulated listing proposed in the bill referred to above. The guarantee to the investor is quite a different thing from a mere statement of facts. This likewise incidentally shows the necessity, regardless of what the regulation may be, of expert interpretation. And in this regard I should disagree with Professor Emery if he intends to imply that the broker should in the strictest sense of the word be a mere agent. The broker cannot assume the position of a guarantor, but he must be an interpreter of what the facts given may mean.

In the discussion of this one point I have agreed with Professor Emery that the Stock Exchange should not be regulated, but I have not denied that manipulation has existed in the past. I have stated that certain evils have existed, but if time allowed I should consider the reforms made in response to public demands, and especially the new attitude that has recently come into the Exchange. I have not stopped short with Professor Emery in stating that I believe that the Exchange should not be regulated. On the other hand, I have offered a more fundamental method of regulation than Mr. Untermyer proposes in that it includes all interstate corporations, which the bill that he wrote for the Pujo Committee does not include. It not only simplifies the work of regulation, but it would place the administration of corporations under an independent bureau, and it would eliminate the question of constitutionality which forced Mr. Untermyer to frame an act that would regulate the exchanges through the United States mail, and thus place the exchanges under the jurisdiction of the Postmaster General. The absurdity of this last everyone recognizes. While no one would *now* deny that the Exchange should have been

closed earlier, is this not far from proving that the government would not have erred? It is often so simple to draw correct conclusions with the aid of historical perspective that we, too often, in our post mortem, assume that we would have made a correct interpretation at the time. As a matter of fact, the banks rather favored a longer delay in the closing of the Exchange, which is only proof of the liability of error in such a technical problem even with the best ability available. The Exchange is to be congratulated rather than condemned on the effective way in which it closed in the face of much opposition. It is largely due to its action that a great financial panic was prevented.

In conclusion I should like to raise questions concerning three points urged by Mr. Untermyer which I do not believe his statements proved. I refer to his oral discussion, as I have not had the privilege of seeing his manuscript. (1) He maintained that "tremendous losses in securities values were experienced" because the Stock Exchange did not close twenty-four or forty-eight hours earlier. And he adds that if the Stock Exchange had been under the control of the government it would have been closed in time to prevent these losses. No one denies the fall in securities prices, but does he offer any proof that the government would have closed the Exchange earlier, or even that it would not have closed it later? Does not Mr. Untermyer assume that the judgment of the same individuals when acting in a governmental capacity is infallible if what he says is true? (2) Mr. Untermyer states that the capital stock of the Reading Railroad was turned over forty-three times in one year; consequently he assumes that the stock was manipulated. The stock, as far as I know, may have been manipulated, but this does not prove it. A Chicago merchant told me the other day that he had purchased some goods which had been bought and sold five times before they reached him. Now it cannot be assumed without further evidence that manipulation existed. It is interesting to note that the thirteen securities to which Mr. Untermyer referred were probably the most speculative stocks of the whole list on the Stock Exchange, and it is not fair that these should be designated as indicating the average condition on the Exchange. While unwarranted buying and selling may have existed in these particular securities in the past, it can hardly be said to have been the condition in the last two or three years. Further, it is interesting to note that he has made no mention

of the change that took place in the property values of these particular companies that he referred to, both in his brief and his paper before the Association. (3) Mr. Untermyer implied that the Stock Exchange was largely responsible for the crippling of the money market of New York in 1907. It probably did have an influence along with a great many other factors, but before his statement can be accepted, would he not have to explain why and how the New York banks distributed practically a quarter of a million in currency to other parts of the country? Secretary Cortelyou in his annual report of 1907 says of this period: "The national banks outside of New York City, in spite of heavy demands upon them, were able by the aid of New York to maintain an amount of cash in December actually larger by a small amount than they held at the date of the previous report on August 22, when conditions were yet relatively tranquil."

Arthur Richmond Marsh: The particular question under discussion here this morning is the desirability of the regulation and supervision of the stock exchanges and commodity exchanges of the United States by the federal government. Mr. Untermyer, to be sure, has so thrown the New York Stock Exchange into the foreground of the picture that little attention has been paid by him or the other speakers here today to the stock exchanges of other cities or to the commodity exchanges at all. The indefensible practices and the enormous uncontrolled power of the New York Stock Exchange have been the burden of Mr. Untermyer's discourse; and he has striven to impress upon this audience of trained economists the necessity of governmental control if the indefensible practices are to be abated, and the propriety of governmental control if the enormous power is to be kept within the bounds of the public interest. He has shown very clearly his opinion that, quite apart from the means that may need to be taken for the cure of specific evils, it is a general truth that governmental regulation becomes imperative for any department of business as soon as it is seen that the community at large is vitally affected by what goes on within that department of business. His conception of the organization of society and of government is that only the unimportant businesses should be left to the free activities of private individuals, but that all businesses which grow to importance should be removed from the domain of private

initiative and brought within the sphere of governmental action. He obviously rejects the notion that substantial justice can be attained, as between any great business and the rest of society, through the operation and influence of the enlightened self-interest and the moral ideals of those immediately engaged in that business. To him the inherent weakness and unregeneration of the individual members of society and the inherent righteousness and justice of the government established by society have evidently become the only sound philosophy of the state. He points to the manner in which we have subjected the railroads, the telegraph and telephone companies, the banks, the insurance companies, and now all the great business enterprises, to governmental control and regulation, as these have emerged, one after the other, from their small beginnings and acquired a general consequence to the public. And he urges that, inasmuch as the New York Stock Exchange affects the interests and welfare of very large numbers of persons all over the country, it too should be placed in the category of things governmentally directed and supervised. In arguing for this contention he derives what may be called his psychological appeal from the recital of alleged abuses of power and evils of practice on the part of the Stock Exchange, its governors and members. His economic and political appeal, however, comes from the doctrine which he evidently holds that the thing to strive for now in this country is an enormous increase, or even exaggeration, of the function of government, and a corresponding diminution of the self-regulated freedom of individual citizens in their various activities and pursuits. In other words, he would have us reverse the theory of our society, as we have inherited it from the past, exalting that which we have held in small esteem, the power of government, and abasing that which we have believed to be the particular means of our nobler success in the world, the self-directing and self-governing energy of our private citizens, limited only by general laws embodying the accumulated wisdom of the race upon the conduct of men in society.

It is only proper that a participant in a public discussion, such as is now going on both here and elsewhere with regard to Mr. Untermyer's proposals in connection with the Stock Exchange, should make clear to his hearers at the start what his own point of view is about the doctrine of the social and economic advantage of governmental control and regulation of the important business

activities of the community. For this reason I venture to say for myself that I do not share in the least degree Mr. Untermyer's views. I have ceased to believe in that fundamental conception of the assumed superior organization of society and more beneficent function of government, from which the theory of the advantage of governmental interposition in the conduct of businesses, however important to the community, proceeds. I have had perhaps unusual opportunities to observe, during some fifteen years past, the actual work done by the ever-increasing number of governmental agencies concerned with the conduct of affairs, and this work has seemed to me to be, substantially without exception, ignorant, ineffective, bungling, and unfortunate in its effects. I do not know where any good to the body politic can be pointed to as having come from the commissions, departments, bureaus, or whatever they may be called, which have been so numerously created by the nation and the states for the regulation of this or that of our important businesses. I have, however, seen them in a multitude of ways deadening enterprise, limiting ambition, restricting constructive effort, and, perhaps worst of all, filling with a kind of mental despair the finest spirits in the fields of their activity. That the Interstate Commerce Commission, for instance, has been and is an incubus upon the railroads of the United States appears to be self-evident for any one who has studied the actual effects of its work, with a mind free from the current conventional assumption, which dominates most, that the Commission is a kind of palladium of the public liberties, in so far as the railroads are concerned.

All that I have just said, however, must be taken, not as intended to press my own opinions about these larger matters, but rather as a necessary indication to my hearers of the point of view from which I approach the particular matter of Mr. Untermyer's proposed subjection of the Stock Exchange to governmental control and supervision. Antecedently, in the light of my observation of governmental control and supervision in other directions, I am opposed to what Mr. Untermyer contends for. I conceive that the economic welfare of the country as a whole requires a stock exchange which is free in its motions; eager in its search for opportunities; active in its endeavor to learn all that can be learned of the changing economic and financial conditions at home and abroad; ready to act and to persuade its customers to act upon

this knowledge, when obtained; and, in general, strong and efficient as the organ through which pulses the life-blood of the economic body politic. Whatever may tend to impair the function of this organ appears to me to involve incalculable loss to the higher industrial and commercial effectiveness of our entire society; and I know of nothing that will more certainly tend to this impairment than such intervention of the government in all the affairs of the Stock Exchange as Mr. Untermyer argues for.

All this, however, may be said to be mere opinion and to be entitled to no more weight than Mr. Untermyer's opinion on the other side. I think, indeed, that it may truly be said that this whole discussion has been confined for the most part to opinion, and that very little attempt has been made to reduce to concrete terms the general proposition of government regulation of the Stock Exchange. It seems to me worth while to get over from the field of abstractions into that of concrete realities, in so far as we can do so. There is in Mr. Untermyer's project one feature which is wholly concrete, even at this very moment. It is that the control and supervision of the Stock Exchange should be entrusted to a particular administrative officer of the government, namely, the Postmaster General. Now the Postmaster General of the United States is a perfectly concrete individual, who is known very well to some of us, in respect to his characteristics as a thinker, as a legislator, and as an administrator. His name is Albert S. Burleson; and before he became Postmaster General he was for many years very prominent in the national House of Representatives. Not only so, but Mr. Burleson's special line of activity as a Congressman was regulating business. It was he, more than all others, who busied himself with the governmental regulation of the cotton exchanges, and particularly the New York Cotton Exchange. In this connection he was fecund in bills, prolific in speeches, incessantly active in committees and in the government departments, and as ingeniously persistent, above and below the surface, as Mr. Untermyer himself. There is, therefore, not the slightest difficulty in ascertaining both Mr. Burleson's attitude of mind and his practical methods in the application of the principle of governmental control and supervision. He can be followed through the *Congressional Record*, through the records of hearings before the House Committee on Agriculture, through the monumental work of the Bureau of Corporations upon the sub-

ject of cotton exchanges and their iniquities, and through the columns of the inspired press.

Now, what stands out in these documents as the predominant characteristic of the Postmaster General is that he is a thoroughly *a priori* regulator of business. He is entirely indifferent to knowledge of the facts, as a preliminary to regulation; he forms his regulative opinions first, and then casts about for allegations of fact, in order to make out a case for his opinions. Nothing is too flimsy and improbable in the way of rumored fact to be acceptable to him if it confirms his opinions; nothing is too substantial and undeniable to be dismissed by him with contempt if it makes against his opinions. He will seize upon any kind of economic absurdity as ample justification for the invasion of the dearest rights supposed to be guaranteed to citizens by the constitution; and he is willing to run any risks of paralyzing a great department of the country's business, of bringing great losses upon vast numbers of persons, and of interfering with all the normal courses of domestic and international commerce and finance, provided he can bring to realization a grotesque theory which he has adopted. In his eyes, unfortunate and perhaps transitorily abusive incidents are alone worthy of attention; and he is indifferent both to the vast mass of regular and wholesome activities, in which such incidents are scantily interspersed, and to the curative processes which are at once set in motion by the indignant reaction of honorable minds against these incidents. He is always for taking the rare and abnormal as typical, and for applying the whole force of the government to the compulsory adjustment of the sound and usual to formulas conceived from the standpoint of the unsound and unusual.

This is the concrete individuality who, if Mr. Untermyer had succeeded in procuring the adoption by Congress of his bill to regulate the Stock Exchange, would actually at this moment be controlling and supervising the affairs of that institution. But, it will be said, postmasters general come and go; and it is not to be expected that Mr. Burleson's successors will be of his kidney. This much is certain, however,—the postmasters general of the future, whoever and whatever they may be, will all be political appointees, and the great majority of them, by reason of the localities from which they come or by reason of the occupations through which they have attained political prominence, will have virtually no

direct acquaintance with either the theory or the practice of domestic and international finance. At the best, they will be honest and industrious shoemakers undertaking to regulate watches, if they are given the duties to perform which Mr. Untermyer's stock exchange bill implies.

And this brings me to what is after all the main point of my argument. It is possible that to some of this audience I may have appeared unduly critical with regard to Postmaster General Burleson, and even to have been moved to some extent by considerations of resentment at the part he has played in the year-long agitation for the deprivation of the members of the New York Cotton Exchange of their freedom of judgment and action in their own business. I cannot, however, be charged with allowing my opinions to be determined by my personal feeling toward an individual when I say that I have reached the conclusion that the best obtainable knowledge and fairness of mind in an officer of the government would yield results, in the way of discretionary regulation of the Stock Exchange or any other exchange, quite as detrimental to the larger public good as would an extreme predisposition on the part of such an officer to stretch the exchange upon the Procrustean bed of his own prejudiced theories. To illustrate what I mean, and with no intention of discourtesy, I am going to take as an example of an ideal public officer for this particular duty the one man in this country who, in the opinion of the judicious, is at once the most competent in his knowledge of security and commodity exchanges and the most judicial in his attitude towards the questions involved in the conduct of their business. I mean Professor Emery, whose address you have this morning listened to. Nobody admires more than I the work which as an economist Professor Emery has done in this field. And yet I am convinced that it would be a very great misfortune, not only for the Stock Exchange, but for the country as a whole, to have Professor Emery, in the capacity of Postmaster General, compelled as a part of his duty, under a law such as Mr. Untermyer proposes, to supervise and regulate the Stock Exchange. For acute as Professor Emery's observation has been of the facts of the business of the exchanges, sound as his method has been in correlating and intrepreting the facts, trustworthy as are his general conclusions from the facts, it is still apparent to one who has lived face to face with and actually participated in the operations of a great exchange that

Professor Emery more than once lays the emphasis on the wrong place, that there are important aspects of the business which are virtually unknown to him, and that he overlooks many secrets of the function of the exchanges. For example, the prominence he gives to the speculative activities of these markets and his subordination of their distributive activites results in a distinct distortion of the picture he has of them in his own thought. In particular, the great insurance, or "hedging," functions of the exchanges, both for commodities and for securities, which in recent years have come to be vastly more important than they formerly were, have received very incomplete attention from Professor Emery.

If, however, Professor Emery were Postmaster General, and his duty were to supervise and regulate the Stock Exchange, he would have no other course open to him but to be guided in the exercise of his vast discretion by such knowledge of the facts as he has and by the conclusions he has derived from those facts. Under the pressure of his general duties he could not hold his hand, pending a fresh examination of the phenomena. He must act; and he must act according to the best judgment which the state of his knowledge makes possible. And if he were to do so, given his unquestioned competency in this very field, he would, in my opinion, produce very fortunate effects in respect to matters vitally important to the health and efficiency of the Stock Exchange. The institution would be checked and clogged in its most valuable activities, and its service to the community would be lessened to an incalculable extent. Here, then, is the true reason for my own inability to accept as beneficent the theory or the practical details of Mr. Untermyer's measure, intended to prevent in the future the abuses on the Stock Exchange, which he alleges to have been general in the past and even now to be irremediable through the operation of moral forces within the Exchange itself.

J. H. Underwood: To those who live at a distance from the Exchange, the very intricacy of its mechanism, the uncertainty whether we understand its operations on the whole or at a given time, seems in itself a reason, although a minor reason, why we should have some representation in the oversight of its activities. Since, as we understand, it has some relation to prices that concern us, some influence on values of securities that affect us, some rela-

tion at times to losses by outsiders who are not discouraged from investments, it seems to us that we might well have some one near at hand to watch it with our eyes and with more disinterestedness than is probable from a control whose chief interest is profits. There is in this suggestion no question whatever of the business integrity of those who govern the Exchange.

After hearing the papers of the discussion it seems desirable that some one expert in the subject should connect more clearly the argument as to the functions of speculation, and the agency of the Exchange in speculation with the extraordinary extent to which the process that has been described as "pyramiding" is carried on.

Possibly it would serve the good of the outside or distant public if the government simply had some representatives in the membership of the Board of Governors of the Exchange.

WM. C. VAN ANTWERP: In an adress delivered at Yale University Mr. George W. Alger, speaking of our moral standards in business affairs as affected by recent developments in America, used these words:

> Pessimism has always a knowing air and it usually has some definite superficial fact or other to point to as its justification. But the noticeable thing about these waves of general pessimism is that they usually seem to come a little late. They tend to get strongest when the reason for coming has largely disappeared. . . . These pessimists remind me of an old lady in my native city who made a specialty of going in and talking about death to convalescents. Somehow she never seemed to get around to prepare her sick friends for death until after they were really beginning to get well, and she would then discourse on her favorite theme so earnestly that she quite overlooked the actual condition of the patient.

As I have not been favored with an advance copy of Mr. Untermyer's address, I have listened with great care to what he has had to say. He has conveyed the impression that the Stock Exchange is an important institution; here and there his pages are sticky with a little syrupy praise; but on the whole he would have us believe that iniquities of various kinds are all too prevalent. These iniquities call for repression, he tells us, and he offers to set them right through government supervision by enforced incorporation.

That the Stock Exchange is an important institution calls for no comment in the limited time allotted for a discussion of Mr. Untermyer's paper. Similarly we need waste no time over his statement that there are a few honest men within its membership,

We are mainly concerned here with the statements, first, that iniquities are rife, and, second, that his proposed remedy will correct them. Mr. Untermyer makes the statement here and elsewhere that minipulation is an important part of the business of the Exchange. He insists that the existence of misleading transactions of this character constitute a valid reason for incorporation or public supervision. If such transactions really do exist, he is correct in his conclusion. But he does not tell us when, where, or how these alleged transactions manifest themselves. The Stock Exchange has a hard and fast rule absolutely prohibiting such transactions and we should be very glad to have any information that Mr. Untermyer can give us in order that we may punish the offenders. It is Mr. Untermyer's duty to do this, but he owes a still greater duty to the state. Manipulation of any kind is prohibited by the Penal Law of the State of New York, Chapter 253. Mr. Untermyer, as a lawyer, is an officer of the court, and it is his duty to report to the district attorney any evidence which he may have tending to show a violation of this statute. He has an added duty as a public-spirited citizen who seeks the confidence of his fellow men. Nothing remains to be said. The fact that he has not reported these alleged infractions of the Penal Law to the district attorney or to the officials of the Stock Exchange speaks for itself.

Lincoln is said to have laid down this legal maxim: "In law it is good policy never to plead what you need not, lest you be obliged to prove what you cannot."

The gentleman who just addressed you is too good a lawyer to ignore this warning, in so far as it applies to a court of law. But he is not now in court. Here he pleads too much and proves too little. His assertion that misconduct prevails within the Stock Exchange is utterly unsupported; he asks you to take his word for it, because, unless you accept that *obiter dictum*, his whole structure falls to the ground. Each charge made here has been dissected and analyzed by competent authority; all the evidence that could be brought to bear pro and con has been submitted to the Senate Committee on Banking and Currency, and I will gladly place it in the hands of every person present in order that he may analyze it for himself. This evidence was submitted to the Senate Committee a year ago in a protracted public hearing resulting from Mr. Untermyer's efforts to enact into law his pet measure of

incorporation. His effort was unsuccessful; the Senate Committee has not even reported his bill. The natural inference is that he has failed to make a case, but, as I said before, you may judge for yourselves after you have studied both sides from the government's published report of the evidence. I think you will find that what is there revealed is an attempt by Mr. Untermyer to exploit the exceptional in order to attract attention to a theory which cannot otherwise survive.

The gentleman has shrewdly prepared for an adverse verdict on his specific charges by supplementing them with abstract charges. He says in effect that if you are not content with his unsupported statement of specific wrongs actually done, you are to consider the *power* which the Stock Exchange possesses, a power, he tells us, which may conceivably do monstrous things. He has of course a perfect right to argue any abstract question so long as he confines himself to abstractions, but when, eloquent with all the vitality of sophistry, he postulates his remedy on a thing which has never happened but which merely *may* happen, we call upon him for a bill of particulars.

Actually the case is this: The Stock Exchange could not exist if the enlightened self-interest and sense of justice of its members did not result in public good; instances to the contrary are exceptional, and you cannot accept as a valid argument against a right or a power otherwise well established, that it may be *liable* to abuse, unless the actual demonstration of the prevalence of such abuse neutralizes the good effects of that power. If this process of reasoning is sound, what becomes of the unsupported contention to which you have just listened?

Of course the Stock Exchange possesses a power which may be wrongfully exercised; so also does every human agency. You and I have within us the power to do murder; the church possesses the power to preach heresy. But the fact that we do not do these things affords a tolerable assurance that we *will* not do them, and this is the way in which society arrives at its verdicts, basing its conclusions on the things men *do* and not on the things they have power to do. The real power of the Stock Exchange is the power through which it has attained its eminence, namely, a just conception of duty to the public, a definite policy founded on that conception, and a firm execution of such policy. Dealing in the evidences of one-fifth of America's material wealth, its prices accepted by

courts and legislatures as the standard barometer of business and trade, where would it be today but for a general recognition of its high standards of business morality? And where would any of us be if nightmares of bondage were imposed upon us by statute, merely because we possess the *power* to do wrong?

Proceeding from one sophistry to another, Mr. Untermyer arrives at his second point. He says that because the Stock Exchange possesses such power it should be forced to incorporate and that it should be placed under the control of the Postmaster General. Now then, in every suggestion of this kind, having to do with the public good, the burden of proof as to the justice and wisdom of any restrictive measure rests on the authority proposing it. The gentleman evades this responsibility, and so I must ask your indulgence whilst I look into this proposal.

The Stock Exchange, as Professor Emery has shown you, is merely a meeting place for its members, who are the agents of others. It is a voluntary association, and not a corporation. It has grown to its present importance through the wealth and development of the country. Speculation on a large scale has accompanied its growth, and speculation, I need scarcely remind this audience, is a necessary and useful part of all business. This speculation numbers among its adherents people in all parts of the world who have a perfect right to speculate, and whose operations do vastly more good than harm. It has also attracted others who have no business to speculate, and who would be prevented from doing so if it were possible. To this latter class Mr. Untermyer's proposals are directed. He tells us that government can set everything right, and that through all-wise and beneficent lawmaking the ills of society may be cured.

It is an ambitious program, affording a view of a distant Utopia and of the Delectable Mountains of humbug. No government is or can be better than the governed; no government is all-wise and few are beneficent; no law can lift a people above the level of its tastes and inclinations. These things are not the business of government. It is not a philanthropic agency; it cannot, save in a restricted sense, protect the individual against himself. All that government can do, in or out of the Stock Exchange, is to secure an ideal measure of liberty and of equal opportunity for all men, leaving the individual to work out his own salvation.

But the Stock Exchange itself can do much more than this, and

it has done it. It has attempted to put an end to unwise and unsafe speculation by its resolution of February 13, 1913, prohibiting its members from transacting business on insufficient margin, and it has appointed a Committee on Business Conduct empowered to see that this rule is obeyed. Despite the fears of my opponent, it has put an end to manipulation through its resolution of February 5, 1913, and here too a standing committee with large powers enforces that law, while the full Board of Governors determines what punishment shall follow its violation. I shall be happy to send to each one of you a copy of the constitution of the New York Stock Exchange in order that you may see how earnestly we strive to prevent wrongdoing by our own members, or the abuse of our facilities by non-members. Perhaps these and other restrictive measures may prove, as time passes, to be insufficient. In that case I think we may be trusted to go farther. In any case you will find, I am sure, as you delve into our affairs (which we cordially invite you to do), that the governors of the Exchange and almost all its members are men as deeply imbued with the potent spirit of honor and fair dealing as are the men who make the country's laws. Aside from the heart and conscience to which all business men in America are listening today as never before, members of the Stock Exchange are always face to face with the fact that their reputations, their good names, and their private fortunes are at stake, each alike dependent upon the good conduct of the business in which they are engaged. More than that, they could not, if they would, ignore the voice of public opinion.

Now we are agreed, I am sure, that while men cannot be remade by statute, they can be and they are kept straight by what the public thinks and says about them, and this is as true of laws as of the men who make them, or the individuals affected by them. However virtuous and high-minded the men who make our laws, any restrictive measure aimed at the Stock Exchange or at the individual becomes a dead letter or an active instrument of oppression and graft unless it is reënforced by that which is above law itself—the supreme voice of public opinion. The legislative remedy which fails to recognize this truth does more harm than the disease it professes to cure. And this, as it seems to me, exposes another fallacy in Mr. Untermyer's contention that more and more laws are needed to do for the Stock Exchange what the honesty of its members, supported by public opinion, alone can do.

In what way, then, has public opinion expressed itself on this matter of incorporating the Stock Exchange? It is so old a subject, and so much has been written about it, that I cannot do more in the limited time allotted, than to sketch it in outline, although I shall be glad to place in your hands fuller information if you desire it. The English Parliamentary Committee on Foreign Loans first investigated the subject in 1875, rejecting incorporation on these grounds (I am quoting from the report):

That such a body (the Stock Exchange) can hardly be interfered with by Parliament without losing that freedom of self-government which is the only life and soul of the business.

Again, in 1877, the subject was referred to a Royal Commission, which reported, after a year of investigation, as follows:

In the main, the existence of the Stock Exchange and the coërcive action of the rules which it enforces upon the transaction of business and upon the conduct of its members have been salutary to the interests of the public. . . . Any attempt to reduce this rule to the limits of the ordinary laws of the land or to abolish all checks and safeguards not to be found in that law, would in our opinion be detrimental to the honest and efficient control of the business.

I am sorry I cannot go into this report in detail; here I can only say that the London Stock Exchange remains, to this day, free from the fetters sought to be imposed by incorporation.

The proposal was next heard of in Berlin, where, in February, 1892, the Chancellor of the Empire appointed a commission of twenty-eight distinguished lawyers, economists, merchants, and landed proprietors to pass upon the question of imposing restrictions on the Berlin Boerse. This commission spent twenty-one months at its labors, reporting adversely, on grounds similar to those adopted by the English commission. The fact that this report was ignored, that the politicians took matters into their own hands and forced the enactment of hostile laws, and that these laws brought about a distaster to German trade and industry, are matters of history which have been admirably treated by Professor Emery in his "Ten Years' Regulation of the Stock Exchange in Germany." The greater part of this law has now been repealed, but Germany has never entirely recovered from its baleful effects. Here we have a practical illustration of an instance where government regulation caused infinitely more harm than the difficulty it attempted to remedy.

We next hear of this project in New York, in 1909, when Gov-

ernor Hughes appointed the famous committee of which an honored member of this body, Mr. Horace White, was chairman. It would be futile to attempt to add anything to the reputation of that commission; even Mr. Untermyer has pronounced it, "A very eminent commission."[1]

After calling the attention of the Stock Exchange to the necessity for various reforms (which, I am proud to say, the Exchange has adopted) the Hughes Commission referred to the subject of incorporation in these words:

> We have been strongly urged to recommend that the Exchange be incorporated in order to bring it more completely under the authority and supervision of the state and the process of the courts. Under existing conditions, being a voluntary organization, it has almost unlimited power over the conduct of its members, and it can subject them to instant discipline for wrongdoing, which it could not exercise in a summary manner if it were an incorporated body. We think that power residing in a properly chosen committee is distinctly advantageous. The submission of such questions to the courts would involve delays and technical obstacles which would impair discipline without securing any greater measure of substantial justice. While this committee is not entirely in accord on this point, no member is yet prepared to advocate the incorporation of the Exchange and a majority of us advise against it, upon the ground that the advantages to be gained by incorporation may be accomplished by rules of the Exchange and by statutes aimed directly at the evils which need correction.

These, gentlemen, are all conspicuous and historic instances in which the subject of incorporating the Stock Exchange has been investigated and determined by experts. Less conspicuous, but equally emphatic, was the rejection of Governor Sulzer's measure by the New York State Legislature in 1912 by a vote of 33 to 7, after protracted hearings at which Mr. Untermyer himself appeared and argued for incorporation. Again, only last year, the matter found its way to the Senate Committee on Banking and Currency at Washington, to which committee was reported a bill introduced by Senator Owen of Oklahoma,—a bill drawn by Mr. Untermyer himself, and argued by him at the public hearings with great force and ability. Many witnesses appeared against it; he alone supported it. It still rests in committee.

Finally, there is the investigation at the hands of the Committee on Legislation of the New York County Lawyers Association. Mr.

[1] *Record of Hearings before Senate Committee on Banking and Currency*, p. 74.

Untermyer was himself chairman of this committee, and he appeared and argued at its meetings when the subject of incorporating the Stock Exchange was under discussion. This committee made two majority reports, both of them opposing the incorporation of the Stock Exchange, on the ground that the measure "will produce no beneficial changes and besides will do positive harm."

With your permission I will read one section only from one of these majority reports:

> The bill is not needed to enforce an honorable course of conduct between the members of the Exchange. No more honorable body of men exists anywhere in the world. Transactions involving large sums of money are consummated every minute without any writing, and only by a movement of the hand or a nod of the head. In pursuance of the desire of the members of the Exchange to have all their dealings clean and above board, tremendous power is given to their Board of Governors, with the result that the Board is able to rule with a firm and just hand. No such result would be possible if the Exchange were incorporated.

Now, gentlemen, where do we stand? Three very eminent government commissions have passed upon this project and have rejected it. The New York State Legislature has rejected it; the Law Committee of the New York County Bar Association has rejected it, and a committee of the United States Senate has pigeonholed it. All the evidence and all the reports are at your service; if you want further information we will throw open to you any channel of inquiry you may desire. What remains is the fact that there must be something fundamentally wrong with this measure.

It is always the safest plan in judging the expediency of any measure to consider its possible defects as well as its possible benefits, and this explains the consistent rejection of incorporation by those accustomed to putting facts before fancies and reason before sophistry. They have found, as I have shown you, that no good purpose would be accomplished by the incorporation of the Exchange; that on the contrary the substitution of public control for the control exercised by the Exchange over its own members would be detrimental to the public interest. For example, a vital function of the Exchange is the exercise of its disciplinary power over its members. Under our Stock Exchange law any act which in the judgment of our governing board violates "just and equitable principles of trade" may be punished as severely as circumstances

warrant. Because we are a private association we may impose upon our members standards much higher than the standards prescribed by law, and this is one of many much standards. When under this code a member is suspended or expelled the penalty becomes operative immediately, and while he may of course turn to the courts, it is a remarkable fact, testifying to the ability and high character of the governing committee, that its action in expelling or suspending a member has never been interfered with by any court in the land.

If we were forced to incorporate, what would happen? The charter would provide, among other things, for a judicial review of the actions of the governing committee, and courts could only interpret our laws according to the laws of the land. There would be countless injunctions and stays of proceedings, years would be spent in carrying cases to higher courts, and meantime the offending member would continue his activities on the floor of the Exchange although his behavior there might constitute a serious menace to the whole body. Discipline could not possibly be maintained in such circumstances, and the standard we are so proud of,—"just and equitable principles of trade,"—would come to mean only what the courts declared it to mean. This is what the Parliamentary Committee of 1875 meant when it said that interference by government would take from the Stock Exchange "that freedom of self-government which is the life and soul of the business."

"The Exchange applies the layman's view of what are just and equitable principles of trade," said Mr. Milburn in a memorable brief, "and is governed more by moral than by strictly legal considerations. There is a wide difference in such matters between what is just from the point of view of honorable conduct and what is just from the point of view of legal rights. It is on this principle that members of the Exchange have been punished by expulsion or suspension for acts contrary to the morals of business, but without any taint of wrong in them in a legal sense." He goes on to say, in language from which I am sure you will not dissent, that "There is no comparison between the competency of the governing committee as a tribunal to try such cases, with its experience and intimate knowledge of the business and its appreciation of the effect of the acts with which the member is charged, and the competency of the ordinary judge without that experience, knowledge,

and appreciation. . . . These are reasons for our statement that a full judicial review of the disciplinary judgments of the governing committee would lower the whole tone of the Exchange and radically impair its standard of just, equitable, and honest dealing. Any movement which deteriorates its standard is inimical to the public interest to a degree commensurate with the vast dealings of which it is the center, and with the function it performs."

My opponent argues that because of its large relationship with the whole public the Stock Exchange really exercises a function of nation-wide importance as a sort of public utility and that its control properly belongs to the government. Where privileges, franchises, or monopolies have been granted, yes. But the Stock Exchange neither asks nor receives anything from the state or the nation, nor does it ask or receive immunity from any law which government or state may enact. Members of the Exchange are just as amenable to the laws of the land as other persons, and a prohibited act is just as unlawful on the Exchange as anywhere else. When, for example, the state legislature enacted the law prohibiting manipulation, that law became just as applicable to transactions within a voluntary association as it would be if it were incorporated. Hence the necessity of regulation on this score is not an argument for incorporation, since it may more easily and less dangerously be accomplished by general laws.

Mr. Untermyer wants the government to have access to the books and accounts of members of the Exchange, in order that the Postmaster General or his subordinates may see what is going on. As I have just explained to you, members who violate any general law may be summoned to court with all their books and papers. But this is not enough; there is to be a body of public officials, political henchmen, constantly examining the books and papers of 1100 members of the Exchange to ascertain whether they have violated the charter of incorporation. I should say the taxpayers would have something to say about this; certainly the moral sense of the community will recoil from an espionage at once so impracticable and so intolerable. The gentleman who proposes this form of servitude is a lawyer; his profession also is one invested with a public interest; immense power for good or for evil rests upon its shoulders; from time to time grave abuses appear which the bar as a whole deplores, and which it strives earnestly to prevent. Would the gentleman welcome a proposal to throw open all his

books and papers and all the affairs of his clients to a swarm of spies and detectives? Would he concede to the Postmaster General a right to act as judge, jury, prosecuting attorney, and executioner in all his professional affairs? He would resist such a proposition to the utmost, and he would be generously supported in so doing by an aroused public opinion.

I cannot go into this subject further, because my time is nearly gone. Public regulation and control of the Stock Exchange when analyzed is without useful purpose, practicability, or meaning. That the Stock Exchange is not perfect is conceded; few human agencies are perfect. But the measure that is here proposed is without efficiency or merit to remedy those imperfections. It is not merely a 15-inch gun to be used to shoot sparrows, as Mr. Conant has described it, but it is a new and untried weapon which, like many similar inventions, may conceivably recoil or burst with consequences much more serious to the bystanders than to the evils it seeks to annihilate. I do not ask you to accept my unsupported statement on this score, but I do ask you to remember that this project has been considered for forty years by experts and condemned by them all, in official reports, briefs, and other memoranda, all of which are open for your inspection.

One word more and I shall have finished. The gentleman has said in a letter to the New York *Times* on November 24, and he has repeated the statement here today, that the action of the governors of the Exchange in the recent crisis incident to the outbreak of war was "irresponsible," that it was "a foolish and desperate blunder," dictated only by selfish motives, that it was "anomalous" and "intolerable," and that the present "uncontrolled license" enjoyed by the Stock Exchange, "spells panic and general disaster for the rest of the country," and so forth, bruising the unresisting air with invective and passion. He was in Europe during this crisis, and he has fallen into error. It is not the habit of the Stock Exchange to boast of its achievements, but I am sure this audience understands that, under the leadership of our famous Committee of Five, the Stock Exchange was at all times in close contact with the best advice and assistance the country affords, that its action was unselfish and public-spirited, and that all its work in this crisis has been generously applauded by officials of the government, by the banking interests, and by the press.

I am sorry that my distinguished friend should be so unhappy

about it, and my sorrow is mingled with solicitude. As I have listened to him, I have been thinking of Sterne's advice to Smollett, who had been visiting the Continent and saw everything in a jaundiced light. "I'll tell it," he cried, "to the world." But Sterne gently counselled him to tell it to his physician.

W. Z. Ripley: Mr. Emery asserts that the members of the Stock Exchange are nothing but agents for outside speculators, and that the Exchange in its corporate capacity performs no commercial function. Is this strictly true? Are there not, for example, two acts of the managers of the Exchange at least which directly affect the public, such as the admission of securities to trading and the striking of them from the list? Has not the power and influence of great bankers and Stock Exchange leaders at times in the past been responsible for the admission of securities without as great publicity as to the standing of the company as was required of others, who had not that standing? Certainly an arbitrary exercise of power under such circumstances is invited. And it would seem as if such power should be hedged about by some measure of restriction. The one great safeguard is always publicity. A complete disclosure of all details as to promotion and financial standing should be required impartially. Whether, under present conditions, in absence of incorporation, this condition obtains is matter for debate.